

EXHIBIT A



14930720

FILED
ALAMEDA COUNTY

FEB 15 2017

CLERK OF THE SUPERIOR COURT

By Erica Baker
ERICA BAKER, Deputy

Andrew B. Downs, SBN 111435
C. Todd Norris, SBN 181337
BULLIVANT HOUSER BAILEY PC
235 Pine Street, Suite 1500
San Francisco, California 94104-2752
Telephone: 415.352.2700
Facsimile: 415.352.2701
E-Mail: andy.downs@bullivant.com
todd.norris@bullivant.com

Attorneys for Defendant Warren Havens

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

ARNOLD LEONG,

Plaintiff,

v.

WARREN HAVENS, et al.

Defendants.

Case No.: 2002-070640

Reservation # R-1825467

**EX PARTE APPLICATION FOR ORDER
CONFIRMING THERE ARE NO PRIOR
RESTRAINTS ON PROPOSED FILINGS
WITH THE FCC AND IN MCLM
BANKRUPTCY**

Date: February 15, 2017
Time: 4:00 p.m.
Dept: 24 (Hon. Frank Roesch)

APPLICATION

Defendant Warren Havens applies *ex parte* pursuant to California Rule of Court 3.1200 *et seq.* for an order confirming the Court will not impose any prior restraint on contemplated filings by Havens with the Federal Communications Commission and related filings in MCLM's bankruptcy:

- Due February 15, 2017: An opposition by Havens, in his name only, and at his expense; for his own interest, to MCLM's February 2, 2017 Petition to Deny Renewal of Certain AMTS Licenses held by Intelligent Transportation and Monitoring Wireless LLC and Environmental LLC. The petition to deny filed by MCLM challenges Havens personally and is based on alleged acts and omissions of Havens. The outcome of this petition will not only affect the status of the licenses held by Intelligent and Environmental, but also Havens' qualification for

BY FAX

1 obtaining other FCC licenses in the future and his reputation before the FCC and
2 in this field.

- 3 • Due February 16, 2017: An application by Havens in his name and at his cost,
4 for his own interest, for review of or related relief relating to FCC decision DA
5 17-20 which finds that Progeny has satisfied the substantial service requirements
6 for the majority of its licenses. Progeny is a direct competitor of the entities in
7 receivership and its holding of these licenses in a manner which for ten years
8 blocked deployment of spectrum by the Havens controlled entities. Havens
9 prevailed in various challenges to Progeny before the FCC in 2014. In this order,
10 the FCC ignored its own rules and procedures to excuse Progeny's misconduct at
11 the auction at which the licenses were obtained (Havens and some of the entities
12 in receivership were the next highest, but unsuccessful bidders for that spectrum).
13 The Receiver has taken the position that she will not seek review of these staff
14 decisions by the full Federal Communications Commission. Rather than
15 abandon a meritorious claim to spectrum with substantial value, and accept a
16 precedent that without challenge could be applied adversely in the future, Havens
17 wishes to seek review in his name, as the second highest bidder for a particular
18 license or licenses and as a party with a beneficial interest in those entities which
19 were also second highest bidders for particular licenses, as well as the other
20 receivership entities who hold complimentary licenses in the joint nationwide
21 plan.

- 22 • Due February 17, 2017: An application by Havens in his name and at his cost,
23 and for his own interest, for review of FCC decision DA 17-68 denying certain
24 petitions for reconsideration filed by Telesaurus and Skybridge Spectrum
25 Foundation. The Receiver has taken the position that she will not seek review of
26 these staff decisions by the full Federal Communications Commission. Rather
27 than accept that abandonment of meritorious positions regarding the subject
28 spectrum with substantial value – and accept an improper precedent that could be

1 applied adversely in the future, Havens wishes to seek review in his name, as
2 party with a beneficial interest in Telesaurus and as an officer of Skybridge.

- 3 • Due on or before March 1, 2017: Appearance in Havens name only, and at his
4 costs for his interests only, in the MCLM Bankruptcy in the United States
5 Bankruptcy Court for the Northern District of Mississippi to address the Court's
6 Order to Show Cause why MCLM's bankruptcy should not be converted to
7 Chapter 7, as well as a filing for filings in response to recent filings by MCLM in
8 the bankruptcy case and the related appeal to the District Court of the Bankruptcy
9 Court's order on MCLM's plan of reorganization, which seeks to terminate
10 Havens' claims and rights.

11 This application is based on the following memorandum in support, the declarations of
12 Warren Havens and Andrew B. Downs, the pleadings and papers on file in this matter, and upon
13 such other evidence and argument as may be presented to the court.

14 Notice was given to all counsel before 10:00 a.m. on February 13, 2017 as shown by the
15 declaration of Andrew B. Downs.

16 MEMORANDUM IN SUPPORT

17 1. The Court's Past Orders

18 The Court is familiar with its past orders, but for purposes of clarity, in this application
19 Havens is referring to the following:
20

- 21 • The November 17, 2015 Order Appointing Receiver After Hearing, and in
22 particular sections 28.d.(3), 28.e.(8) and 28.e.(9) of that Order.
- 23 • The January 26, 2016 Order modifying the receivership order to give Havens
24 authority to act for the entities in the Leong arbitration.
- 25 • The July 11, 2016 Order Regarding Communications by Defendant Warren
26 Havens to the FCC.
- 27 • The Court's oral statements on the record on June 30, 2016 regarding prior
28 restraints.

- The January 13, 2017 Order on *Ex Parte* Application of Defendant Warren Havens to Instruct Receiver.

2. **The Contemplated Filings**

The contemplated filings are described above in the application, and in greater detail in the accompanying Declaration of Warren Havens. In simple terms, the first filing before the FCC's Wireless Bureau is one responding to a direct attack on Havens' character to hold FCC licenses, and seek relief from the FCC, and Havens' response will be on his own behalf. While Havens hopes and expects his response will be beneficial to the entities whose licenses are challenged, he will respond on his own behalf only.

The other two filings are petitions for review by the full Federal Communications Commission of staff decisions which the Receiver has opted not to pursue further. The first is a decision to ignore bidding violations by a competitor whose illegal conduct deprived the entities of being the high bidders for spectrum, setting a bad precedent, harmful in general as well as to Havens' career in wireless. The second is a staff decision denying petitions by Skybridge and Telesaurus for reconsideration of previous staff decisions finding they had not sufficiently satisfied the initial "construction" (or "substantial service") requirements with regard to certain licenses, including the majority of the Skybridge licensed spectrum and had not demonstrated good cause for an extension of time to initially "construct." In each instance, Havens is prepared to make these filings solely on his own behalf as an individual with a beneficial interest in the licenses at issue.

3. **The Contemplated Filings are Within Havens' Rights Under Federal Law**

Havens incorporates his declaration in which he explains why he has constitutional, statutory and common law rights to make the filings contemplated which may not be abridged.

4. **The Contemplated Filings Are *Per Se* Permissible Under the Prior Orders**

The Court's prior orders prohibit the following:

- Interference with the *Receiver's* discharge of her duties (11/17/15, ¶ 28.d.(3)).
- Commencing, prosecuting, continuing to enforce, or enforcing any suit or proceeding in the name of the receivership entities, with the exception of the

1 Leong arbitration (11/17/15, ¶ 28.e.(8) as modified by the 1/26/16 Order).

- 2 • Communicating with the FCC regarding the FCC Licenses or the Receivership
3 Entities in the name of or on behalf of the receivership entities (11/17/15, ¶
4 28.e.(9), as modified by the July 11, 2016 Order, ¶ 1).

5 Measured by these standards, Havens believes each of the filings he proposes to make is
6 not prohibited by the Court's prior orders. Havens discusses the issues raised by each filing in
7 more detail in his accompanying declaration so this brief focuses on why those filings are not
8 prohibited and should not be prohibited by the Court's prior orders.

9 **A. The Opposition to MCLM's Challenge**

10 MCLM and the Havens entities have been challenging each other for years before the
11 FCC. Pre- Receivership, as shown by FCC records, Havens has prevailed and resulting in a
12 large improvement in the entities AMTS spectrum nationwide, and cleared many disputes
13 through FCC proceedings. MCLM held, and still holds, by invalid claims, some spectrum
14 licenses that block the deployment of spectrum licenses held by the receivership entities in
15 many parts of the nation, and holds other spectrum licenses rightfully claimed by Havens and
16 the entities. Over the years, through his dogged determination, Havens has succeeded in getting
17 the FCC to (i) strip MCLM of approximately 80% of its spectrum, which directly benefits the
18 receivership entities, and (ii) to commence formal proceedings, still ongoing, regarding the
19 MCLM "geographic" spectrum. This occurred because the evidence marshalled by Havens
20 shows MCLM cheated several receivership entities in the auction for this spectrum (the entities
21 were the lawful high bidders for that spectrum, and this cheating also caused the entities to
22 overpay for the spectrum licenses they did win in the same auction).¹

23 MCLM, seizing upon Leong's non-adjudicated contention that he is, via an oral
24 partnership, a co-controlling member of the receivership entities hidden from the FCC, argues
25 the license renewals should be declined or investigated because by failing to disclose Leong's
26

27 ¹ Such clearance of unlawful spectrum blockage and claims is a major "public interest" benefit
28 that the FCC is mandated to encourage and pursue under the Communications Act and the 1996
Telecom Reform Act. In short, Congress encourages competition in telecommunications,
commencing with getting and defending spectrum licenses.

1 alleged "oral partnership" co-controlling role, the entities have (or Leong has, given Havens'
2 vehement denial of these allegations) violated the law in a manner which disqualifies them from
3 holding these licenses. Leong, in fact, is not now and never has been a co-controlling member,
4 nor has he ever applied to the FCC for approval of or determination of his alleged co-control as
5 required by statute and FCC regulations.²

6 MCLM has also challenged the licenses based on the alleged acts and omissions of
7 Havens detailed in the Sippel Order. As the Court is aware, the Sippel Order has been on appeal
8 for the past 20 months or so, with no action being taken by the FCC.³

9 Any opposition, whether by the Receiver or by Havens, to the MCLM Petition must be
10 supported by admissible evidence. Unlike the Receiver or her attorneys and consultants,
11 Havens has the personal knowledge necessary to admissibility. Havens has reached out to the
12 Receiver in an effort to cooperate and coordinate, but instead has been met with procedural
13 barriers erected by counsel for the Receiver (See Exhibits C and D to the Downs declaration).

14 MCLM's personal attacks on Havens mirror ALJ Sippel's erroneous and unfounded
15 attacks upon him in the Sippel Order. MCLM was a party to that action and supported the
16 position taken by ALJ Sippel. Because Havens is attacked directly, and it is his character and
17 qualifications to hold licenses that is placed in issue by MCLM, Havens has a right to defend
18 himself, just as this Court has previously agreed he may continue to defend against the Sippel
19 Order.

20 Havens will be addressing the FCC, but not on behalf of the entities. His goal is the
21 same as the Receiver's only proper goal – to defeat MCLM's challenge so that the entities
22 licenses are renewed.

23 Thus, the Court should not impose a prior restraint.

24
25 ² Leong was warned long ago that contending he was a co-controlling member would imperil all
26 the licenses because of the representations. Havens has long contended in this action that
27 Leong's position presented a risk to the licenses. Now, MCLM has seized upon Leong's
28 contention to support its effort to take these licenses away. Ironically, Leong has voluntarily
signed various documents over the years for presentation to the FCC confirming he has no
controlling interest.

³ Exhibit C to Havens Declaration.

1 **B. Progeny: DA 17-20**

2 This contemplated filing does not run afoul of any of the prior orders, as amended.
3 Havens is petitioning the FCC, but solely on his own behalf. He will disclaim any
4 representation of any of the entities presently in receivership.

5 In particular, Havens is not:

- 6 • Interfering with the Receiver's discharge of her duties.
7 • Commencing any proceeding in the name of any of the entities.
8 • Communicating with the FCC regarding the FCC Licenses or the Receivership
9 Entities in the name of or on behalf of the receivership entities.

10 The licenses are issue are Progeny's licenses. Havens will not speak for the Receiver or
11 the receivership entities. Because the Receiver has already renounced any intent to seek further
12 relief regarding the Progeny licenses, instead opting to acquiesce to the error of the FCC staff,
13 Havens is in no way interfering with her performance of her duties.

14 Any such filing, whether by the Receiver or by Havens, must be supported by admissible
15 evidence. Unlike the Receiver or her attorneys and consultants, Havens has the personal
16 knowledge necessary to admissibility.

17 Thus, the court should not impose a prior restraint.

18 **C. DA 17-68: Telesaurus and Skybridge**

19 This contemplated filing involves most of Skybridge's licenses, and one Telesaurus
20 license in the "LMS" class, but it is one where the Receiver has opted not to seek full
21 Commission review of the staff decision. Without putting words in her mouth, it is our
22 understanding she doesn't believe it is worth the effort.
23

24 Havens could not more strongly disagree. He is willing, at his expense and effort to seek
25 that review, and to do it in his name as a party beneficially interested. Because the Receiver has
26 effectively abandoned these licenses, Havens effort to salvage these licenses should not be
27 regarded as a prohibited communication.
28

1 Any such filing, whether by the Receiver or by Havens, must be supported by admissible
2 evidence. Unlike the Receiver or her attorneys and consultants, Havens has the personal
3 knowledge necessary to offer admissible evidence.

4 Thus, the court should not impose a prior restraint.

5 **D. The MCLM Bankruptcy**

6 Last week the Bankruptcy Court in Mississippi issued an Order to Show Cause,
7 returnable March 1, on why the MCLM bankruptcy should not be converted into a Chapter 7
8 (liquidation) procedure. As noted above, MCLM also made recent filings in that case to
9 terminate claims and participation by Havens and the entities. As this Court is aware, the
10 Receiver has abandoned efforts to continue with claims against MCLM's before the FCC as
11 noted above. Those FCC claims are the basis of the claims of Havens and the entities in this
12 bankruptcy case. Because the Receiver has abandoned all claims against MCLM, if Havens
13 wishes to pursue them at his cost in this bankruptcy case, but with the benefit that may accrue to
14 the receivership entities.
15

16 Thus, the court should not impose a prior restraint.

17 **5. The Impact of the January 26, 2016 Order**

18 In the January 26, 2016 Order the Court gave Havens the right and responsibility of
19 asserting the rights of the receivership entities in the *Leong v. Havens* arbitration before the
20 American Arbitration Association. The MCLM Petition to Deny Renewal is based on two
21 matters at issue in the arbitration, both issues where the Receiver has steadfastly refused to take
22 a position, presumably because by doing so she would have to take sides in the arbitration.

23 First, MCLM regurgitates the allegations made by ALJ Sippel regarding Havens' and his
24 attorney's actions in FCC Matter 11-71, the challenge to MCLM's licenses based on MCLM's
25 admitted failure to disclose its true ownership during the bidding process. Disclosure of
26 MCLM's true ownership would have deprived it of the bidding credits it needed to outbid
27 Havens and the receivership entities for those licenses.
28

1 Second MCLM takes note of Leong's allegation that he is a secret co-controlling
2 member of the LLC's, and thus of the licenses. MCLM then argues that the non-disclosure of
3 Leong's [non-existent] co-controlling interest means Havens and the receivership entities also
4 failed to disclose controlling interests, thus requiring the termination of all of the licenses held
5 by the receivership entities. Leong's claim to be a secret co-controlling member (which is
6 rebutted by documents Leong himself executed in connection with other FCC transactions) is at
7 issue in the arbitration.

8 The action Havens proposes to take is not only necessary to protect the licenses and his
9 rights to hold licenses in the future, but it is part and parcel of Havens strategy in the pending
10 arbitration. The positions Havens intends to assert are consistent with those to be taken by the
11 entities in the arbitration to protect the entities, and their assertion here is part of that strategy.
12 Thus, Havens believes it is consistent with and authorized by the January 26, 2016 Order.

13 **6. Compliance With Rule 3.1202**

14 Pursuant to Rule 3.1202(a) of the California Rules of Court, counsel for the parties of
15 record is as follows:

16 Counsel for Plaintiff:

17 1. Paul F. Kirsch, James M. Robinson, Shopoff, Cavallo, & Kirsch, LLP,
18 601 Montgomery Street, Suite 1110, San Francisco, California 94111

19 2. Richard W. Osman, Bertrand, Fox, Elliot, Osman & Wenzel, 2749 Hyde Street,
20 San Francisco, California 94109

21 Counsel for Defendants:

22 3. Andrew B. Downs, and C. Todd Norris, Bullivant, Houser, Bailey, PC, 235 Pine
23 Street, Suite 1500, San Francisco, California 94104

24 Counsel for Receiver Susan L. Uecker:

25 4. Geraldine A. Freeman and David A. DeGroot, Sheppard, Mullin, Richter &
26 Hampton LLP, Four Embarcadero Center, 17th Floor, San Francisco, California 94111.

27 **7. CONCLUSION**

28 There should be no prior restraint in violation of Havens' rights. Defendant Warren

1 Havens respectfully requests this request be granted.

2 DATED: February 14, 2017

3 BULLIVANT HOUSER BAILEY PC

4
5 By 

6 Andrew B. Downs
7 C. Todd Norris

8 Attorneys for Defendant Warren Havens

9 4837-1830-2274.3

10 *****



14930680

BY FAX

Andrew B. Downs, SBN 111435
C. Todd Norris, SBN 181337
BULLIVANT HOUSER BAILEY PC
235 Pine Street, Suite 1500
San Francisco, California 94104-2752
Telephone: 415.352.2700
Facsimile: 415.352.2701
E-Mail: andy.downs@bullivant.com
todd.norris@bullivant.com

Attorneys for Defendant Warren Havens

FEB 15 2017

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

ARNOLD LEONG,

Plaintiff,

v.

WARREN HAVENS, et al.

Defendants.

Case No.: 2002-070640

**(PROPOSED) ORDER CONFIRMING
PROPOSED FCC AND MISSISSIPPI
BANKRUPTCY FILINGS DO NOT
VIOLATE THIS COURT'S PRIOR
ORDERS**

Date: February 15, 2017

Time: 4:00 p.m.

Dept: 24 (Hon. Frank Roesch)

The ex parte application of defendant Warren Havens for confirmation that his proposed filings before the FCC and the United States Bankruptcy Court for the Northern District of Mississippi came before the Court on February 15, 2017. All parties were represented by counsel.

After considering the submissions, evidence and argument presented by the parties,

IT IS HEREBY ORDERED that the Court will not impose a prior restraint on defendant Warren Havens making, if he so chooses, the following initial filings and any required or appropriate follow-up filings or communications in FCC and other proceedings identified below, as proposed in his moving papers, *solely in his name and for his own interests and defenses*:

1. An opposition or response to Maritime Communications/Land Mobile LLC's February 2, 2017 Petition to Deny Renewal of Certain AMTS Licenses held by Intelligent Transportation and Monitoring Wireless, LLC and Environmental LLC submitted before the

1 Federal Communications Commission ("FCC").

2 2. An application or response to the FCC for review of or related relief relating to
3 FCC decision DA 17-20 regarding Progeny LMS, LLC.

4 3. An application or response to the FCC for review of or related relief relating to
5 FCC decision DA 17-68 regarding certain petitions for reconsideration and related relief relating
6 to Telesaurus Holdings GB, LLC and Skybridge Spectrum Foundation.

7 4. An appearance, responses and actions (with or without legal counsel) regarding
8 the bankruptcy case in the United States Bankruptcy Court for the Northern District of
9 Mississippi, case number 11-13463-NPO entitled *In Re Maritime Communications/Land*
10 *Mobile, LLC* including in connection with (a) An Order to Show Cause dated February 8, 2017
11 issued by the Bankruptcy Court, and (b) a pending case on appeal before the United States
12 District Court for the Northern District of decisions of the Bankruptcy Court in this *Maritime*
13 *Communications* bankruptcy case.

14
15 DATED: _____

16
17 _____
Judge of the Superior Court

18 4840-9701-7411.5

19 *****

NEXT DOCUMENT



SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
A Limited Liability Partnership
Including Professional Corporations
GERALDINE A. FREEMAN, Cal. Bar No. 111483
DAVID A. DEGROOT, Cal. Bar No. 168073
Four Embarcadero Center, 17th Floor
San Francisco, California 94111-4109
Telephone: 415.434.9100
Facsimile: 415.434.3947
Email: gfreeman@sheppardmullin.com
ddegroot@sheppardmullin.com

FILED
ALAMEDA COUNTY

FEB 16 2017

CLERK OF THE SUPERIOR COURT
By Deputy

Attorneys for Receiver
SUSAN L. UECKER

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA- UNLIMITED JURISDICTION

ARNOLD LEONG,

Plaintiff,

v.

WARREN HAVENS, an individual,
ENVIRONMENTEL LLC, ENVIRONMENTEL-2
LLC, INTELLIGENT TRANSPORTATION &
MONITORING WIRELESS LCC, V2G LLC,
ATLIS WIRELESS LLC, SKYBRIDGE
SPECTRUM FOUNDATION, VERDE
SYSTEMS LLC, TELESARUS HOLDINGS
GB, LLC, and DOES 1 through 30, inclusive,

Defendants.

Case No. 2002-070640

**[PROPOSED] ORDER ON EX PARTE
APPLICATION OF DEFENDANT
WARREN HAVENS**

Date: February 15, 2017
Time: 4:00 p.m.
Dept.: 24

RESERVATION NO. R-1825467

On February 15, 2017 at 4:00 pm in Department 24 of the above-titled Court, located at
located at 1221 Oak Street, Oakland, CA, 94612, the *Ex Parte* Application ("Application") of
defendant Warren Havens ("Havens") came on for hearing. Appearances were as stated on the
record.

The Court, having considered the application papers filed by Havens, the Oppositions of
the Receiver and of plaintiff Arnold Leong ("Leong"), the argument of counsel, the records of the
Court and good cause appearing therefor,

IT IS HEREBY ORDERED THAT Havens' application is DENIED;

1 ~~IT IS FURTHER ORDERED THAT Havens is enjoined from filing any pleading at the~~
2 ~~FCC or otherwise communicating with the FCC regarding:~~

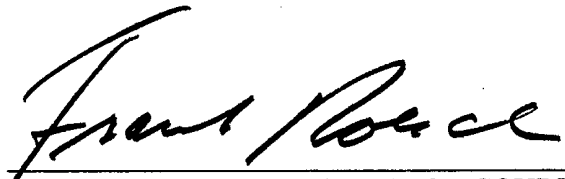
3 ~~1. Any FCC licensee or FCC license in the same category of licenses held by any of~~
4 ~~the Receivership Entities, including, without limitation, Public Coast Station (both AMTS and~~
5 ~~non-AMTS), LMS, MAS or Paging (the "FCC License Categories");~~

6 ~~2. Any application filed with the FCC to transfer control of a company, assign a~~
7 ~~license, or lease spectrum involving any FCC license (or FCC licensee holding an FCC license) in~~
8 ~~the FCC License Categories, and;~~

9 ~~3. Any FCC rulemaking proceeding or other FCC proceeding of general applicability~~
10 ~~to any FCC license (or FCC licensee holding an FCC license) in the FCC License Categories.~~

11 **IT IS FURTHER ORDERED THAT**, except as explicitly ordered herein, all other
12 orders of this Court remain in effect. No prohibition as to Havens' communications with the FCC
13 or any other person or entity is modified by this Order, ~~except as explicitly provided here.~~

14
15 DATED: 2/16/2017

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18 JUDGE OF THE SUPERIOR COURT
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